



United States Attorney
Southern District of New York

United States District Courthouse
300 Quarropas Street
White Plains, New York 10601

January 16, 2019

BY ELECTRONIC MAIL and CM/ECF

The Honorable Kenneth M. Karas
United States District Judge
Southern District of New York
300 Quarropas Street
White Plains, New York 10601

**Re: *United States v. William Popkave,*
17 Cr. 45 (KMK)**

Dear Judge Karas:

The Government respectfully submits this letter, pursuant to Section 5K1.1 of the United States Sentencing Guidelines (“U.S.S.G.” or “Sentencing Guidelines”), to advise the Court of the pertinent facts concerning the assistance William Popkave has provided in the investigation and prosecution of other persons. Popkave provided significant information regarding the a fraud he and others—in particular, Richard Brega—committed, in which Brega billed Popkave’s employer, Rockland BOCES, for maintenance of buses that was never performed, and Popkave caused those bills to be paid, resulting in the fielding of improperly and insufficiently maintained buses for special-needs students, as well as the attempt to cover that crime up when law enforcement began investigating.

After law enforcement approached Popkave, Popkave chose to cooperate, meeting with the Government frequently to discuss the details of a complex fraud, as well as the subsequent attempts at obstruction, and help wade through the mass of evidence the Government had gathered. As this Court is aware, Popkave testified at Brega’s trial via videotaped Rule 15 deposition.¹ As the Court recalls, Popkave was wholly forthcoming, including about his own involvement in Brega’s fraud and attempts at obstructing justice. Popkave’s cooperation was instrumental in both charging and convicting Brega: although it may have been possible to charge and convict Brega on the fraud without Popkave’s help, it would have been substantially more difficult. And, though the paperwork demonstrated that something was afoot with Brega’s attempts at obstruction, Popkave’s narrative eliminated any alternative explanations. Popkave revealed information about his criminal

¹ Due to Popkave’s health issues, the parties chose to depose Popkave in advance of trial pursuant to Federal Rule of Criminal Procedure 15. This turned out to be a good idea, as Popkave’s health kept him from attending Brega’s trial in person.

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partnership with Brega to the Government, this Court, and a jury. Popkave provided substantial assistance to the Government.

To summarize: Popkave was an excellent cooperating witness who provided substantial assistance to the Government, and merits a downward departure, pursuant to U.S.S.G. § 5K1.1.

In light of these facts, and assuming that Popkave continues to comply with the terms of his cooperation agreement and commits no additional crimes before sentencing, the Government intends to move at sentencing that the Court sentence Popkave under the factors set forth in United States Sentencing Guidelines (“U.S.S.G.” or the “Guidelines”) Section 5K1.1(a)(1)-(5). This Court has scheduled Popkave’s sentencing hearing for January 23, 2019, at 11:00 a.m.

I. Relevant Entities

The fraud described herein involved Richard Brega and his various corporate entities, on the one hand, and Rockland BOCES on the other.

A. Richard Brega

In or about 1997, Brega started Brega D.O.T. Maintenance Corp. (“Brega DOT”), a fleet maintenance repair shop, in Rockland County, New York. In or about 2002, Brega established Brega Transport Corp. (“Brega Transport”), a public transportation company, in Rockland County, New York. In or about 2009, Brega founded RTB Properties, which owned and operated a public transportation and maintenance facility in Valley Cottage, Rockland County, New York. In or about 2015, Brega founded Brega Commercial Collision (“BCC”), a heavy-duty auto body service in Rockland County, New York. At all times relevant to this memorandum, BREGA owned and controlled Brega DOT, Brega Transport, RTB Properties, and BCC (together, the “Brega Enterprises”).

Brega’s success has relied, in part, on various county contracts. Among other things, in 2008, Rockland County awarded Brega DOT a bus fleet maintenance bid (the “2008 Vehicle Maintenance Agreement”) whereby Brega DOT would provide maintenance and service for Rockland County’s bus fleet. As part of the 2008 Vehicle Maintenance Agreement, certain other entities, such as Rockland BOCES, were permitted to use Brega DOT for their own bus-fleet maintenance and service as if they were parties to the 2008 Vehicle Maintenance Agreement. The 2008 Vehicle Maintenance Agreement had a one-year term, but gave Rockland County the option to extend for up to four additional one-year terms. The 2008 Vehicle Maintenance Agreement was extended by one year in each of 2009, 2010, 2011, and 2012, and by three months in 2013.

In or about 2013, Rockland County awarded Brega DOT a new bus fleet maintenance bid (the “2013 Vehicle Maintenance Agreement”) whereby Brega DOT would provide maintenance and service for Rockland County’s bus fleet. As part of the 2013 Vehicle Maintenance Agreement, certain other entities, such as Rockland BOCES, were permitted to use Brega DOT for their own bus-fleet maintenance and service as if they were parties to the 2013 Vehicle Maintenance Agreement. The 2008 Vehicle Maintenance Agreement had a one-year term, but gave Rockland

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County the option to extend for up to four additional one-year terms. The 2013 Vehicle Maintenance Agreement was extended by one year in 2014, ultimately expiring on June 30, 2015.

B. Rockland BOCES

In or about 1948, the New York State Legislature created the Boards of Cooperative Educational Services, or “BOCES,” to provide school districts with a program of shared educational services. BOCES allow multiple school districts to save money by pooling resources and sharing costs. BOCES are governed by a Board of Education, made up of representatives from component districts. There are currently 37 BOCES in New York State.

Rockland BOCES is a BOCES that serves eight component school districts, each of which is in Rockland County, New York. According to the Rockland BOCES website, “Rockland BOCES delivers educational programs for students with special needs, teens interested in career and technical training, adult learners preparing for new job opportunities and educators seeking to upgrade their professional skills.” Among the services that Rockland BOCES offers to its students is a fleet of buses, some of which are specially equipped for students with physical disabilities.

In most years, Rockland BOCES receives hundreds of thousands to millions of dollars in federal funding.

C. William Popkave

Popkave was a local Rockland County car mechanic who operated a gas station/car-repair shop. He eventually left that shop and became the transportation supervisor for Rockland BOCES. In that role, Popkave oversaw the dispatch and maintenance of Rockland BOCES’ entire bus fleet. Initially, Rockland BOCES performed maintenance on its own fleet, with a staff of car mechanics who worked for Popkave. Over time, however, Popkave and Rockland BOCES decided that Rockland BOCES would be better served by outsourcing most of its maintenance and repair work.

Popkave was active in his local church, but otherwise presents as a fairly lonely man. As this Court saw in Popkave’s testimony, it is apparent that he was willing to “help” Brega as much because Brega treated him as a “big-shot” and a friend as because Brega did not require Popkave to pay his personal bills.

Shortly after the Government began investigating the Brega/Rockland BOCES fraud—including interviewing Popkave and employees of Rockland BOCES—Popkave, who was not in good health to start, suffered a massive heart attack. While Popkave ultimately recovered—though he is still under close medical attention—he took the opportunity to retire from Rockland BOCES. Rockland BOCES, which knew that the Government was investigating Popkave, allowed Popkave to retire rather than determining whether to suspend or terminate him.

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II. The Offense Conduct²

A. Richard Brega and the Brega Enterprises

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B. Rockland BOCES

In or about 1948, the New York State Legislature created the Boards of Cooperative Educational Services, or “BOCES,” to provide school districts with a program of shared educational services. BOCES allow multiple school districts to save money by pooling resources and sharing costs. BOCES are governed by a Board of Education, made up of representatives from component districts. There are currently 37 BOCES in New York State.

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In most years, Rockland BOCES receives between about \$800,000 and \$1.2 million in federal funding. There have been years, however, in which Rockland BOCES received far more federal funding; for example, in 2016, Rockland BOCES received a \$4 million grant from the federal Substance Abuse and Mental Health Services Administration.

C. William Popkave

William Popkave was a local Rockland County car mechanic who operated a gas station/car-repair shop. He eventually left that shop and became the transportation supervisor for Rockland BOCES. In that role, Popkave oversaw the dispatch and maintenance of Rockland BOCES’ entire bus fleet. Initially, Rockland BOCES performed maintenance on its own fleet, with a staff of car mechanics who worked for Popkave. Over time, however, Popkave and Rockland

² Because the Court sat through the Brega’s trial, this summary will be relatively brief. It is taken, word-for-word, from the summary set forth in the Government’s sentencing submission for Brega.

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BOCES decided that Rockland BOCES would be better served by outsourcing most of its maintenance and repair work.

D. Brega's Contracts With Rockland County and, by Extension, Rockland BOCES

Brega's success relied, in part, on various county contracts. Among other things, in 2008, Rockland County awarded Brega DOT a bus fleet maintenance bid (the "2008 Vehicle Maintenance Agreement") whereby Brega DOT would provide maintenance and service for Rockland County's bus fleet. As part of the 2008 Vehicle Maintenance Agreement, certain other entities, such as Rockland BOCES, were permitted to use Brega DOT for their own bus-fleet maintenance and service as if they were parties to the 2008 Vehicle Maintenance Agreement. The 2008 Vehicle Maintenance Agreement had a one-year term, but gave Rockland County the option to extend for up to four additional one-year terms. The 2008 Vehicle Maintenance Agreement was extended by one year in each of 2009, 2010, 2011, and 2012, and by three months in 2013.

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The service of Rockland BOCES' buses by Brega DOT included regular preventative maintenance ("Preventative Maintenance"). To perform Preventative Maintenance on a Rockland BOCES bus, Brega DOT was supposed to, among other things, receive the bus at Brega DOT's facility, inspect the bus, and, ordinarily, drive the bus. To obtain payment for Preventative Maintenance, Brega DOT created invoices documenting the work done, provided the invoices to Rockland BOCES, and, once Popkave approved the bill, received payment from Rockland BOCES.

E. The Fraud and Bribery Scheme

Brega conspired to and did steal money from Rockland BOCES by, among other things, billing Rockland BOCES for vehicle repair services that, as Brega well knew, were never performed. To do so, Brega and employees operating at his direction generated fake invoices in order to give the false appearance that his company had performed regular Preventative Maintenance on certain buses, when in fact those buses were not even brought to Brega DOT. To create the fake invoices, and to obtain payment from Rockland BOCES for work that was never performed, Brega bribed Popkave with tens of thousands of dollars-worth of free personal vehicle repairs. Popkave, in turn, emailed Brega lists of buses and their mileages for purposes of creating fake invoices, and thereafter approved payment of the fake invoices at Rockland BOCES.

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Brega began laying the groundwork early in his relationship with Popkave. Brega would host and cater get-togethers in his office for some friends and associates, as well as local politicians and Popkave. (Popkave Tr. 37–41).³ Popkave “felt good being a part of the in crowd.” (Popkave Tr. 41). After Rockland BOCES began to use Brega DOT to perform maintenance on its bus fleets, Popkave began bringing his personal cars and trucks to Brega DOT for individual maintenance. (Popkave Tr. 42–43). One of the reasons he did so was because Vincent Marzella, Sr.—a local government official—explained to Popkave that if Popkave “helped Richard, he would help [Popkave].” (Popkave Tr. 42–43). Marzella was right. Brega DOT performed services on Popkave’s cars, and then gave Popkave the keys to those cars without making him pay for the services. (Popkave Tr. 45). While Brega DOT sent Popkave bills, Popkave did not feel obligated to pay them; rather, he threw them away. (Popkave Tr. 46–47).⁴ Popkave saw a good thing and began bringing cars belonging to his friends and family for service on his account. (Popkave Tr. 47–49). Brega DOT continued working on Popkave’s cars, Popkave’s friends’ cars, and Popkave’s family’s cars, even though Popkave was racking up tens of thousands of dollars in unpaid bills, never leaning on Popkave to pay his bills or sending Popkave’s account to a collection agency. (Popkave Tr. 48–51). As Popkave explained:

Q. Why did you bring the vehicles of your family and friends to Brega DOT for service?

A. To get the work done that was needed.

Q. Why did you bring them there to Brega DOT?

A. I was happy with what was going on?

Q. What do you mean?

A. I was getting work done. And they were providing good work and I wasn’t paying.

Q. Was it your understanding you wouldn’t have to pay for those vehicles as well, the family and friends?

A. Yes, I had my own account

* * *

Q. Why didn’t you pay for the work being done by Brega DOT on your personal vehicles?

³ “Popkave Tr.” refers to the transcript of Popkave’s deposition, which was admitted at trial.

⁴ Popkave explained that, at the very beginning, he paid “a couple small bills,” but that quickly stopped. (Popkave Tr. 46).

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A. I didn't think I had to.

* * *

Q. When you brought in your personal vehicles for service at Brega DOT and continued to get your car serviced and returned to you without paying for it, what was your understanding about whether you had to pay the bill?

A. I didn't think I had to.

Q. So far as you understood it, you were getting free vehicle service from Brega DOT?

A. Yes.

(Popkave Tr. 49, 51–52).

Eventually, Brega saw his opportunity to capitalize on his investment in Popkave. Popkave had not been sending Rockland BOCES buses to Brega DOT for preventative maintenance services (also known as “PM services”), and this reduced Brega DOT’s revenue. So Brega approached Popkave with a simple, utterly fraudulent, scheme: Popkave did not need to send the buses to Brega DOT; rather, he just needed to send information to Brega DOT and Brega would invoice Popkave as if he had performed preventative maintenance services on the buses—which he had not—and Popkave would cause Rockland BOCES to pay the bill. This way, Brega would get paid and Popkave would get the paperwork to show that the buses were being maintained. Rockland BOCES, by contrast, would be paying for work that was not done, and the Rockland BOCES children would ride buses that were not being maintained. Brega made clear what had always been implicit: Popkave’s free service was a bribe and Popkave’s participation in the fraud was the quo to the quid of free services. As Popkave explained:

Q. Can you tell us generally, and in sum and substance, what Richard Brega said to you about PM services on Boces busses during discussions with you?

A. He needed to get the PMs over there, you know. He needed to get the PM services over. There was discussions, and I don’t remember word-for-word, that he needed to show productivity every month. Also, for—for either what was owed to him or what he had billed out, he needed to show a monthly nut.^[5] And so this is how that all came about between us to make to bring the busses over.

⁵ Brandon Sweeting explained that Brega needed to make at least \$200,000 a month in gross parts and labor sales. (Tr. 260).

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Q. What do you mean "this is how that all came about between us"?

A. To—with the PM services.

Q. When he referred to his monthly nut or something like that, what did you understand Richard Brega to be talking about?

A. I guess—once again, I don't know numbers, I don't know I understood it to mean that he had to meet some goal monthly.

Q. What kind of goal?

A. Financially a goal.

Q. What did that have to do, if anything, with the PM services on Boces busses?

A. Well, once I sent the PMs over, it was to my understanding, which never happened, but I was to get some credits toward my bill, my own bill also. But that never happened. So I didn't put pressure on him, he didn't put pressure on me.

Q. You referred a couple of times to sending over PMs or something like that in your answer just now.

A. Yes. PM information.

Q. Did you have discussions with Richard Brega that lead to you sending over to him information to do with PMs?

A. Yes.

Q. What was the substance of those discussions?

A. I don't recall. It just had to do with that we discussed the monthly nut, and also I would be able to get a PM slip for my book to show I'm in compliance with mileage and date.

Q. And during those discussions, what was said in substance about how you would get such a slip for PM service?

A. I would send over a lot of emails with the bus number, the date it had to be done by, and the mileage off the bus to put onto the repair order, invoice.

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Q. And what would you receive?

A. I would receive a invoice that the work got done and a PM sheet for our PM logbook.

Q. What was the purpose of you sending that information and Brega DOT sending that invoice?

A. It was just a cover up for getting the PMs done on time and to be—and the billing.

Q. And the arrangement between yourself and Richard Brega, that you're describing discussions about, did that include sending the bus to Brega DOT for service?

A. No.

Q. During those discussions, about arranging for bills on PM services when the bus didn't go there to have it done, did Richard Brega make any reference to your unpaid bill on your personal vehicles?

A. He made references.

Q. What, in substance, did he say about that?

A. Kept me up-to-date with the total, where it was, where I stood.

Q. Can you describe, as best as you can recall, what sort of references Richard Brega made to your unpaid bill during discussions you had with him about PM services on the Boces vehicles?

A. I'm sorry, say that—rephrase that again.

Q. Sure. Can you describe for us, as best as you can recall, what, in substance, Richard Brega said to you when he made reference to your own personal bill, which was not paid for your personal vehicles, during discussions about PM services on Boces vehicles?

A. That I needed to get some PM—the PM information over there to his place. I had to get the information to him.

Q. And what, if anything, did that have to do with your own personal vehicles and your unpaid bill?

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A. I was supposed to get credits off of my bill not knowing, \$10 or \$20. I never knew how much or whatever. I was supposed to get a reduced statement or, you know, adjustments on my statement. I'm not sure what to say.

Q. And are you saying the discussion was not more specific about how much your bill would be adjusted?

A. No, it never was a specific to that.

Q. Is it fair to say the discussions you're describing were more general than that?

A. Yes.

Q. Were you paying your bill?

A. No.

Q. And during these discussions were you told in substance, or in any way, you have to pay your bill?

A. No.

(Popkave Tr. 54–59).

Brega's plan worked. Popkave had his employees perform a perfunctory check of all of the fleet's buses' fluids every other Saturday, during which the employees wrote down the mileage of those buses in logs. (GX 222). Popkave used the information from those Saturday logs to e-mail Brega lists of buses that were due for preventative maintenance and their mileages. Brega then forwarded those e-mails—or the contents of those e-mails—to his service writers Brandon Sweeting and, later, Jill Ann Lepore, who created fake work orders and PM sheets (which also served as invoices) at Brega's direction, using the agreed-upon flat rates for preventative maintenance inspections.⁶ (Tr. 264–65, 397–98). Those buses were not actually brought into Brega DOT and were not actually inspected.⁷

The fake invoices were created in batches:

- On December 20, 2012, Brega created \$2,520 worth of fake invoices

⁶ Those rates increased over time.

⁷ Indeed, when buses were brought in, there were always problems that needed to be fixed. (Tr. 90, 256). Whatever problems there may have been with the buses for which Brega generated false invoices were not repaired.

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- On December 21, 2012, Brega created \$2,520 worth of fake invoices
- On December 31, 2012, Brega created \$2,520 worth of fake invoices
- On February 11, 2013, Brega created \$5,040 worth of fake invoices
- On March 28, 2013, Brega created \$5,040 worth of fake invoices
- On May 4, 2013, Brega created \$5,040 worth of fake invoices
- On May 15, 2013, Brega created \$2,520 worth of fake invoices
- On June 15, 2013, Brega created \$4,536 worth of fake invoices
- On October 24, 2013, Brega created \$7,758.30 worth of fake invoices
- On December 26, 2013, Brega created \$8,158.30 worth of fake invoices
- On January 29, 2014, Brega created \$7,758.30 worth of fake invoices
- On February 25, 2014, Brega created \$8,158.30 worth of fake invoices
- On April 30, 2014, Brega created \$7,958.30 worth of fake invoices
- On July 24, 2014, Brega created \$10,701.62 worth of fake invoices

Brega provided Popkave with the false invoices. Popkave then approved those false invoices, which he forwarded to Rockland BOCES' accounts payable department. Rockland BOCES, relying on Popkave's approval, paid Brega DOT, mailing the checks. The fake invoices detailed above, all of which were paid in full by Rockland BOCES for services that were never performed, totaled \$80,229.12.⁸

When the buses were due for state inspection, Popkave would actually bring the buses into Brega DOT, where Brega DOT would sufficiently service the buses to pass inspection. Because the buses had not been properly maintained, the cost of these pre-inspection maintenances were much higher than they should have been.

Brega also forgave Popkave enormous sums of money that Popkave owed to Brega; this was Brega's bribe of Popkave. (GX 508). On January 31, 2013, Brega forgave Popkave

⁸ There may have been additional fake invoices; these are the ones we have identified thus far.

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\$47,318.81.⁹ On December 10, 2014, Brega forgave Popkave \$30,000.¹⁰ (GX 508). On January 6, 2015, Brega forgave Popkave \$9,608.76.¹¹ (GX 508). On February 13, 2015, Brega forgave Popkave \$76.87. (GX 508). On May 4, 2015, Brega forgave Popkave \$216.91. (GX 508). In total, this means that Brega provided Popkave with \$87,221.35 worth of free vehicle services.

F. Obstruction of Justice

In late 2014, Brega became very concerned that investigators were closing in on him. (GX 715). While Popkave was at Brega's offices, Brega took Popkave into the parking lot for a walk-and-talk. (Popkave Tr. 63–65).¹² Brega explained that he "was concerned that he was going to be investigated for his business actions." (Popkave Tr. 67). Accordingly, Popkave's open bill—that is, the evidence of Brega's bribery of Popkave—"needed to be cleared up." (Popkave Tr. 67). "He said that myself and others, that he had money out there that he needed to clear up. What we call on-the-street-money, you know, or and so mine was an open account, as were others that he was collecting money on, to clear up all his open accounts." (Popkave Tr. 67).

In other words, Popkave needed to repay the money he owed Brega DOT in order to conceal the fact that Brega was providing Popkave with free services. Popkave knew that he owed Brega around \$40,000. (Popkave Tr. 68). Popkave only had around \$10,000 available, so Brega asked Popkave if Popkave had anything of value that Brega could purchase in order to provide Popkave with money to pay down Popkave's account balance; Popkave had a motorcycle that he did not want to give up and mechanic's tools worth around \$40,000. (Popkave Tr. 68–73). Brega and Popkave ultimately agreed that Brega would "purchase" of Popkave's mechanic's tools for the \$30,000 balance of the account.¹³ (Popkave Tr. 68, 70–71). Popkave would take that money, turn around, and pay it right back to Brega, only, on paper, it would be to pay off his bill. (Popkave Tr. 71). This would all be a sham transaction, as Brega agreed to pay Popkave back over time for the money Popkave would "receive" for the tools and then hand back to Brega. (Popkave Tr. 68, 73).

Popkave did as asked. Brega then gave Popkave a \$30,000 check for the tools, and Popkave turned around and paid Brega the account balance, and then nearly \$10,000 additional cash.

⁹ On March 7, 2013, Brega reversed this twice; effectively adjusting his books to account for that forgiveness transaction-by-transaction.

¹⁰ As detailed below, this was part of the obstruction of justice; Brega created a paper transaction to allow Popkave to "pay" him \$30,000.

¹¹ As detailed below, this was part of the obstruction of justice; Brega created a paper transaction to allow Popkave to "pay" him \$9,608.76.

¹² In a text message to Popkave, during which Brega spoke in code because he believed that "my phone is being monitored," Brega explained that his concerns were about "[w]hat we talked about walking the parking lot a couple of weeks ago." (GX 715).

¹³ Needless to say, Brega, who already owned a large vehicle maintenance and repair facility, did not need Popkave's tools.

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(Popkave Tr. 73–80; GX 10-13). In particular, on December 3, 2014, a \$30,000 cashier's check was issued from the account belonging to one of the Brega Enterprises at the Greater Hudson Bank, NA to Popkave with the memo reading "TOOLS FOR NEW BUSINESS." (GX 10). On December 8, 2014, Popkave deposited the \$30,000 in his personal bank account. (GX 11). Two days later, on December 10, 2014, Popkave wrote a personal check to Brega DOT for \$30,000. (GX 12). On January 2, 2015, Popkave wrote a personal check to Brega DOT for \$9,608.26. (GX 13). Brega cleared Popkave's bill. (Tr. 541–42; GX 508). Popkave understood that Brega would eventually reimburse Popkave for the money that Popkave had just paid Brega. (Popkave Tr. 68, 73).

G. The Aftermath

In October 2015, Rockland BOCES decided to leave Brega after learning that it was paying exorbitant fees for preventative maintenances. (Tr. 79–82). Rockland BOCES decided to bring its buses instead to Southern Westchester BOCES, which would charge around \$225 for a preventative maintenance (instead of the \$835 charged by Brega DOT). (Tr. 82). Once Rockland BOCES began to send its buses to Southern Westchester BOCES, it discovered something that made a Rockland BOCES, David Gleason, executive "sick to [his] stomach." (Tr. 84). Mr. Gleason explained:

A. I saw brakes that were metal on metal where the brake pads had worn down to the point where there was no brake pad. And that was rubbing against those rotors. I saw a tremendous amount of rust on the underside of the carriage of those buses. There was issues with ball joints. There was issues with clamps that appeared to have been installed incorrectly. And I know that there was a window in one of the buses and it appeared that the window, a piece of glass, had been installed backwards.

Q. What did you do when you saw the condition of the buses?

A. Well, the first thing, I knew that I was going to have to start replacing those buses.

Part of—and parts of the—and you didn't ask me this, but I live Upstate where they get a lot more snow and salt Upstate. And Upstate, with the buses, you have to be very mindful of the amount of surface rust and rust on the undercarriage of the vehicle, because they won't pass a DOT inspection. A DOT inspector won't pass them if they have a tremendous amount of rust on the undercarriage of the buses. So Upstate, a bus won't last as long as it will down here, because they use a lot more salt.

But when I saw those buses and I saw the amount of rust and wear, it became very clear to me that I was going to have to

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start replacing those vehicles, that I could not, in good conscience, put children in those kind of vehicles and expect that they're going to be safely transported.

Q. So what did you do to transport children at that time?

A. Initially, we started obtaining new buses from the vendors as quickly as we could. But we also rented buses from Southern Westchester. He had a few buses so that we could send vehicles over for the maintenance for the major repairs to be done on those vehicles. He would send us back some of his spares so that I could continue to transport kids while my buses were being fixed.

(Tr. 85–86; *see also* GX 50-89, 50-101, 50-98, 50-104, 50-105, 50-109 and 50-48 (photographs of selected deteriorating buses). The supervisor and Southern Westchester BOCES recognized that the buses were not “in a condition that they could be driven when they were brought to” him. (Tr. 663).

At trial, Mr. Gleason estimated that Rockland BOCES spent approximately \$50,000 on bus rentals during this time, and over a million dollars ultimately to replace the fleet. (Tr. 86). Mr. Gleason has since run the precise numbers—including figuring out what amounts were spent on renting buses versus repairing buses, and determined that Rockland BOCES spent: \$105,136.21 to repair the fleet to keep the buses on the road and passing the DOT inspections from November 2015 through February 2016; and \$21,150 to rent buses while the fleet was being repaired. Rockland BOCES ultimately purchased new buses, reducing its costs by the trade-in value of the old buses, costing a total of \$2,233,284.87, and received \$6,527.50 for buses that it auctioned off after being unable to trade them in, for a net fleet replacement cost of \$2,226,757.37.

III. The Information and Cooperation Agreement

Popkave was charged with one count each of: (1) participating in a conspiracy to commit mail fraud and honest services fraud, in violation of 18 U.S.C. § 1349; (2) mail fraud and honest services fraud, in violation of 18 U.S.C. §§ 1341 and 1346; (3) theft concerning a program receiving federal funds, in violation of 18 U.S.C. § 666(a)(1)(A); (4) bribery concerning a program receiving federal funds, in violation of 18 U.S.C. § 666(a)(1)(B); and (5) obstruction of justice, in violation of 18 U.S.C. § 1512(c)(2). Popkave pleaded guilty to all four counts with which he was charged, and entered into a cooperation agreement in which he agreed to meet with law enforcement officials, be open and honest about his and others’ criminal conduct, and testify truthfully if called to testify.

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IV. Substantial Assistance Provided by Popkave

A. Popkave's Proffers

As set forth above, Popkave set forth significant information about Brega's fraudulent conduct, as well as his own part in that conduct. While the paperwork provides strong indicia of fraud and obstruction—the invoices batched together corresponding to Popkave's e-mailed lists that are different than other invoices, and the \$30,000 check from Brega to Popkave just two days before Popkave's \$30,000 check to Brega—there was nothing conclusive without the testimony of Popkave.

Popkave initially resisted admitting his part in the fraud, or, for that matter, that there even was a fraud. (He was somewhat more forthcoming at the beginning about Brega's attempt to obstruct justice). He initially claimed, in a confused manner, that his e-mails simply contained lists of buses that he had just brought to Brega—or was about to bring to Brega—for preventative maintenance, to assist Brega with record-keeping. As he was confronted with more e-mails, more unusual invoices, and bus maintenance logs that demonstrated that the mileage on the buses was different on the days they were purportedly "serviced" than on the invoices, Popkave met with his attorneys again, came back, and said that it would feel good, at last, to tell the truth. He was then forthcoming about the entire fraud, including the fact that one reason he engaged in it was because Brega had allowed him, and continued to allow him, to get his cars serviced without paying Brega. Popkave made himself available to the Government at Government request (except when he was hospitalized and/or bedridden), and continues to be available.

B. Popkave's Testimony at Trial, Via Rule 15 Deposition

Popkave's testimony at trial—via Rule 15 deposition—was very important to the Government's case. Popkave provided a narrative of all of the charged crimes, as he was central to their execution. In doing so, he explained the background of the relationship between Brega and Rockland BOCES—as well as the relationship between himself and Brega—and the evolution of Brega's fraudulent scheme. He testified at length, while very ill, and endured significant cross-examination, without losing his composure, showing confusion, or otherwise faltering. He paid attention and provided precise, yet complete, answers, ensuring that the jury comprehended what happened that led a number of people who appeared to be otherwise-honest businessmen to engage in a fraud intended primarily to line Brega's pockets, while allowing Popkave to both get free service on various cars and trucks and become, for lack of a better term, one of the "cool kids." Although the paper trail was fairly damning on its own—particularly when paired with the testimony of other Brega employees—Popkave's truthful testimony streamlined the Government's case by having Popkave act as a narrator, tying together the scheme. Additionally, it would likely have been impossible to charge or prove Brega's attempts to obstruct justice without Popkave's

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confirmation that the natural inferences from the fraudulent payments were, in fact, the correct ones.¹⁴

Popkave met with the Government frequently prior to Brega's indictment, and met with the Government to prepare for his Rule 15 deposition, in spite of his health problems. As such, the Government was able to structure its case in an efficient manner that could be easily understood by the jury.

In short, Popkave testified truthfully and comprehensively and was an excellent witness.

C. The Results of Popkave's Substantial Assistance

Popkave provided substantial assistance in many ways. First, he confirmed the Government's understanding of how the fraudulent scheme worked, and helped the Government understand certain details about which it could only speculate without an "inside" man. Second, he provided information about other individuals, including but not limited to Brega.¹⁵ Third, he helped the Government better understand thousands of documents, including the interplay between invoices, the "Saturday PM checklists," the bus-driver books, and other documents. Fourth, Popkave testified truthfully and comprehensively at Brega's trial, after which a jury convicted Brega of three counts.¹⁶

Section 5K1.1 of the Sentencing Guidelines sets forth five non-exclusive factors that sentencing courts are encouraged to consider in determining the appropriate sentencing reduction for a defendant who has rendered substantial assistance: (1) "significance and usefulness" of assistance (§ 5K1.1(a)(1)); (2) "truthfulness, completeness, and reliability" of information and testimony (§ 5K1.1(a)(2)); (3) "nature and extent" of assistance (§ 5K1.1(a)(3)); (4) "any injury suffered, or any danger or risk of injury to the defendant or his family" resulting from assistance (§ 5K1.1(a)(4)); and (5) "timeliness" of assistance (§ 5K1.1(a)(5)).

Popkave provided significant and useful assistance to the Government. Popkave's information was not only timely, but, in certain cases, also new to the Government.

* * * * *

¹⁴ The jury did not convict Brega of the obstruction-of-justice count, but this Court found that Brega, in fact, obstructed justice.

¹⁵ The Government ultimately did not charge any other individuals than Brega. But it bears emphasis that such charging decisions did *not* reflect any concerns about Popkave's truthfulness.

¹⁶ As this Court knows, the Government's decision about whether Popkave merits a 5K letter depends on his abiding by the terms of his cooperation agreement—including whether he testifies truthfully when asked to do so—and the Government would have made a 5K departure request even had the jury acquitted Brega. That said, the jury's verdict simply confirms what this Court could see during the trial: that Popkave was credible.

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As a result of the foregoing, the Government has determined that William Popkave has provided substantial assistance in the investigation and prosecution of other persons. In particular: Popkave's assistance was significant and useful to a range of matters and resulted in convictions of a criminal involved in a sophisticated fraud and obstruction of justice (U.S.S.G. § 5K1.1(a)(1)); the information he provided about the charged crimes and related crimes was truthful, complete and reliable (U.S.S.G. § 5K1.1(a)(2)); his assistance was extensive and very substantial (§ 5K1.1(a)(3)); and his substantial assistance was timely (U.S.S.G. § 5K1.1(a)(5)).

V. Conclusion

In sum, although Popkave's crime was undoubtedly extremely serious—among other things, it put particularly vulnerable children at risk, took money from a school district, gave the public reason to doubt the integrity of public servants such as Popkave, and attempted to thwart the Government's and this Court's mandate to seek the truth about criminal activities—Popkave provided substantial assistance to law enforcement by supplying information about other persons, including those with whom he had conspired to violate federal laws, and testifying truthfully and accurately as directed. For the reasons set forth above, and assuming that Popkave continues to comply with the terms of his cooperation agreement and commits no additional crimes before sentencing, the Government intends to move at sentencing, pursuant to Section 5K1.1 of the Sentencing Guidelines, that the Court sentence Popkave in light of the factors set forth in Section 5K1.1(a)(1)-(5) of the Guidelines.

Please feel free to contact me with any questions or issues.

Respectfully submitted,

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